

JAN 25 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHELLE L. MITCHELL,

Defendant - Appellant.

No. 04-30517

D.C. No. CR-04-00014-FVS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Fred L. Van Sickle, Chief Judge, Presiding

Submitted January 23, 2006**
Seattle, Washington

Before: RAWLINSON and CLIFTON, Circuit Judges, and MARSHALL,***
Senior District Judge.

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

**This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

***The Honorable Consuelo Marshall, Senior United States District Judge for the Central District of California, sitting by designation.

Michelle Mitchell contends that her mandatory minimum sentence is the result of plain error. We disagree. Mitchell cannot establish error because she knowingly and voluntarily waived her right to seek a sentence below the mandatory minimum. *See United States v. Olano*, 507 U.S. 725, 732-33 (1993) (holding that no error results when a legal rule has been waived).

Neither *United States v. Booker*, 543 U.S. 220 (2005), nor *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc), applies to mandatory minimums. *See United States v. Cardenas*, 405 F.3d 1046, 1048 (9th Cir. 2005). Therefore, no re-sentencing is required. *See id.*

AFFIRMED.